

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 556 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MAYA LAXMANDAS PUNJABAI

Versus

KINGSON BENEFIT AND CHIT FUND

Appearance:

MR PV NANAVATI for Petitioner

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 21/03/2000

ORAL JUDGEMENT

#. This is plaintiff's appeal against the judgment and decree of City Civil Court, Ahmedabad dtd 27-11-1979 deciding Issue No : 8 as preliminary issue and answering the said issue in affirmative and dismissing the suit of the plaintiff - appellant being barred by the provisions

of the Indian Arbitration Act.

#. The brief facts essential for disposal of this appeal are that the plaintiff was appointed as the Director of respondent No : 1. Her Directorship was terminated by respondent No : 1 Company. The dispute arose between the parties which was referred to sole arbitrator Mr.Mulchand Kevalram under written agreement dated 12th February, 1971 executed by the parties. The arbitrator entered upon the reference and in the course of adjudication of reference, thought that the parties should be called upon to decide and amicably settle their disputes. Parties agreed to the suggestion of arbitrator and ultimately agreed to certain terms and conditions and also gave in writing to the arbitrator that they have so entered in mutual settlement and agreement. The arbitrator thereupon gave an award on 27-5-1971. This award was not made rule of the Court. After lapse of 4 years, the plaintiff appellant filed Civil Suit being Civil Suit No : 926 of 1975 in the Court of City Civil Judge, Ahmedabad seeking recovery of Rs.25,000/- on the basis of the agreement between the parties which was the result of mediation of the so called arbitrator Mr.Mulchand Kevalram.

#. The suit was resisted on variety of grounds. Upon which various issues were framed. With the consent of the parties, issue No : 8 was framed to the effect whether the suit is barred under the provisions of the Arbitration Act.

#. This issue was decided by the Judge of the Court below through the impugned order holding that the suit is barred by Section 32 of the Arbitration Act. Accordingly, Issue No : 8 was decided in affirmative with consequence that the suit was dismissed being barred by Section 32 of the Arbitration Act. It is therefore this appeal.

#. The list was revised thrice but none appeared for the respondents though they are served. They neither appeared in person nor engaged any counsel.

#. Mr.P.V.Nanavati, learned counsel for the appellant has been heard. The judgment under appeal as well as the records have been examined.

#. The trial court has made a reference to Section 31 of the Arbitration Act. For resolving the controversy of this appeal, to my mind, Section 31 of the Arbitration

Act, which deals with jurisdiction, is hardly relevant. Issue No : 8 seems to have been framed with reference to Section 32 of the Arbitration Act. It provides for bar to suits contesting arbitration agreement or award. It reads that notwithstanding any law for the time being in force, no suit shall lie on any ground whatsoever for a decision upon the existence, effect or validity of arbitration agreement or award nor shall any arbitration agreement or award be enforced, set aside, amended, modified or in any way affected otherwise, than as provided in this act.

#. Shri Nanavati contended that Section 32 of the Arbitration Act has no application inasmuch as, the suit of the plaintiff appellant did not challenge the existence of the arbitration agreement nor it challenged the so called award nor existence or validity of the arbitration agreement or award was challenged. On the other hand, he contended with reference to averments made in the plaint that the cause of action for the suit arose not on the basis of the award but on the basis of oral agreement arrived at between the parties before the arbitrator. Shri Nanavati further contended that actually Shri Mulchand Kevalram was not arbitrator but he was acting as Mediator to settle the disputes between the parties and if any agreement was arrived at between the parties before such mediator and the said agreement was not honoured by one of the parties, certainly, civil suit for recovery of Rs.25,000/- was maintainable and the view taken by the learned trial court is contrary to law and erroneous. I have given my thoughtful consideration to the arguments of Shri Nanavati but I am unable to agree with his submissions for various reasons. Mark 3/2 is the agreement dated 12th February, 1971. It was read over by Shri Nanavati before me and from this agreement, it can be safely said that it was nothing but an arbitration agreement under which, the parties agreed to appoint Shri Mulchand Kevalram as sole arbitrator and also agreed to refer their disputes to the said arbitrator and further agreed to abide by the award given by the arbitrator. Consequently, it is difficult to accept the contention of Shri Nanavati that Shri Mulchand Kevalram was acting as mediator and not as arbitrator. There is no ambiguity in the agreement Mark 3/2 and from this document, it can be safely said that there was an agreement between the parties to appoint Shri Mulchand Kevalram as sole arbitrator. The parties further agreed to refer their differences and disputes to the sole arbitrator and further agreed to abide by the award rendered by such arbitrator.

#. It is further clear from the judgment under appeal as well as from the award and record that the arbitrator entered upon the reference and held several sittings. In the course of sittings, the arbitrator was of the view that demand for payment of compensation to the tune of Rs.25,000/- made by the plaintiff was reasonable and justified. However, he thought it proper to impress upon the parties to resolve the matter amicably. The parties agreed to the suggestion of the arbitrator and ultimately agreed to certain terms to settle their disputes. Those terms have been reproduced in the award dated 27th May, 1971. The award rendered by the arbitrator is a speaking award and it cannot be treated as waste paper or as paper reciting the terms of agreement arrived at between the parties in the course of arbitration proceedings. The arbitrator was appointed with the consent of the parties. The arbitrator is not obliged to follow the procedure laid down in the Code of Civil Procedure. He can regulate his own procedure for deciding the disputes referred to him by the parties. If the arbitrator held several sittings and in the course of those sittings, he thought that the parties should be impressed upon to get the matter settled amicably, there was nothing wrong in it. This procedure adopted by the arbitrator cannot be said to be contrary to law. The parties agreed to the suggestion made by the arbitrator and certain terms and conditions were agreed upon by them which are reproduced in the award. The arbitrator mentioned in the award that during the proceedings of the above matter, he made several attempts to bring amicable settlement regarding Issue No : 3 for compensation and gave an opportunity to the parties to meet themselves to patch up their differences. On this, the parties requested for extension of two months time which was granted by the arbitrator and thereafter, the parties agreed to the suggestion of the arbitrator and entered in agreement to the terms and conditions which were brought to the notice of the arbitrator. In the concluding portion of the award, the arbitrator has mentioned that he had given full consideration to the above referred terms and conditions as mutually agreed by the parties and as stated above and that these terms and conditions are reasonable and fair and the parties have themselves amicably settled their disputes and differences as referred to above, for which, they have given the arbitrator a separate writing to this effect duly signed by them. Accordingly, the arbitrator declared the award in those terms. As such, in the first place the award dated 27th May, 1971 has to be treated as award. It was the result of the arbitration proceedings in the course of which, the parties settled their disputes on certain

terms and conditions and also gave a separate writing to this effect to the arbitrator which was duly signed by them. In these circumstances, I am unable to accept the contention of Shri Nanavati that there was some oral agreement arrived at between the parties and on the basis of that oral agreement, cause of action accrued to the plaintiff appellant to file a suit for recovery of Rs.25,000/-. From the body of the award, it is clear that the main dispute was for payment of compensation to the tune of Rs.25,000/-. The dispute regarding the termination of Directorship was not agitated before the arbitrator and as such, it was concluded that the termination of Directorship of the appellant was final. On the point of the compensation, the arbitrator acted upon the agreement entered into between the parties in the course of arbitration proceedings and those terms and conditions in the agreement were accepted by the arbitrator and he gave award in the terms of those terms and conditions. It cannot be said that there remained in existence any separate oral or written agreement upon which, cause of action accrued to the plaintiff appellant for filing the suit for recovery of Rs.25,000/-. A specific mention in the last portion of the award that the parties gave to the arbitrator a separate writing to this effect clearly indicates that whatever terms and conditions were agreed upon by the parties were communicated to the arbitrator in writing. Consequently, I am unable to accept the contention that there was some oral agreement between the parties and the arbitrator was acting as mediator for settlement of the disputes between the parties. On the other hand, it is established from the record that the arbitrator was appointed in pursuance of agreement dated 12th February 1971 and he entered upon the reference and ultimately rendered the award on 27th May, 1971 honouring the terms and conditions arrived at between the parties in the course of arbitration proceedings.

##. It is further clear from the record that this award of 27th May, 1971 was not filed in the court nor it was made rule of the court. Consequently, if the terms and conditions upon which, the award was rendered by the arbitrator is argued to be oral agreement, it makes no difference and it does not give any separate cause of action. It is from the pith and substance of the plaint, allegations and reliefs sought for, from which it can be decided what was in reality the allegations made in the plaint and what was in effect the reliefs sought in the plaint. If in this light, keeping in view the doctrine of pith and substance, the plaint allegations are

scrutinised, it can be said that the grievance of the plaintiff appellant in the court below was that on the basis of oral agreement, the plaintiff was entitled to file suit for recovery for Rs.25,000/-. Actually, in fact, it is challenge to settlement between the parties in the course of arbitration proceedings and also challenge to the arbitration agreement and further challenge to the appointment of the arbitrator and alleging that the arbitrator was not appointed as arbitrator but was merely acting as mediator. These challenges are certainly barred by Section 32 of the Arbitration Act quoted above.

##. In view of above discussions, the suit was certainly barred by Section 32 of the Arbitration Act. Therefore, the Court below has not committed any illegality in answering Issue No : 8 in affirmative and consequently, dismissing the suit being barred by Section 32 of the Arbitration Act. The appeal is thus without merit and is bound to fail.

##. The appeal is dismissed with no order as to costs.

Date : 21-3-2000 [D.C.Srivastava, J.]

#kailash#